

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL ENCARNACION,

Plaintiff,

-against-

MICHELLE FOGGIE, Clerk of the Bronx Supreme Court
Criminal Division; and JOHN SAMPUGNARO, the
motion clerk on September 13, 2018,

Defendants.

22 Civ. 1733 (ER)

ORDER

EDGARDO RAMOS, United States District Judge:

Samuel Encarnacion, who is currently incarcerated at Five Points Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that the defendants interfered with his postconviction submissions in his state court criminal proceedings. Doc. 2. By order dated March 18, 2022, the Court granted Encarnacion's request to proceed in *forma pauperis* (IFP). Doc. 3.

By order dated May 9, 2022 (the "May 9 Order"), the Court dismissed the claims against the following defendants on the basis of immunity: Sandra Irby, Assistant Deputy Counsel for the New York State Office of Court Administration; Shera Night, Bronx County Assistant District Attorney; John W. McConnell, Attorney for the Office of Court Administration for New York State; Jennifer N. Russell, Bronx County Assistant District Attorney; and Martin Marcus, Justice of the Bronx Supreme Court. Doc. 8. In the May 9 Order, the Court also permitted Encarnacion's claims against Foggie, Clerk of the Bronx Supreme Criminal Division, and John Doe, the motion clerk on September 13, 2018 for the Bronx Supreme Court Criminal Division, to proceed. *Id.*

In the May 9 Order, the Court also noted that because Encarnacion has been granted IFP status, he was entitled to rely on the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Pursuant to the May 9 Order, on May 10, 2022, the Clerk of Court completed a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Foggie and mailed it to Encarnacion (along with other documents, including, for example, “Instructions for Litigations Who Do Not Have Attorneys”). *See* Doc. 10. That same day, the Clerk of Court also issued a summons for Foggie. Doc. 9. To date, however, service has not been executed on Foggie.

On July 29, 2022, Encarnacion filed an amended complaint, which identifies John Sampugnaro as the defendant previously referred to as John Doe. Doc. 19. The amended complaint, however, again names Irby and Knight as defendants. For the reasons specified in the Court’s May 9 order, **Irby and Knight are dismissed as defendants in the amended complaint.**

Also on July 29, 2022, Encarnacion filed a motion for a 90-day extension to serve the amended complaint. Doc. 20. On October 5, 2022, the Court granted Encarnacion’s request for a 90-day extension. Doc. 21. On October 24, 2022, the Court received a letter from Encarnacion, seeking to clarify the due date to serve the amended complaint and requesting that a summons be issued for John Sampugnaro.

The Court hereby grants Encarnacion an extension until **January 5, 2023** to execute service of the amended complaint against the remaining defendants, Sampugnaro and Foggie.

Furthermore, to allow Encarnacion to effect service on Sampugnaro through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a USM-285 form for Sampugnaro and to mail the form to Encarnacion. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Sampugnaro.

Lastly, on October 25, 2022, the Court received a letter from Encarnacion requesting the docket sheets for the instant case, as well as for 21-Civ-07584 (ER) (SDA), *Samuel Encarnacion v. Sandra Irby, et al*, which was referred to Magistrate Judge Stewart D. Aaron on January 27, 2022. Encarnacion's request is granted. The Clerk of Court is respectfully directed to mail Encarnacion the docket sheets for the instant case and for 21-Civ-07584, along with a copy of this order.

IT IS SO ORDERED.

Dated: October 26, 2022
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is written above a horizontal line.

EDGARDO RAMOS
United States District Judge

DEFENDANT AND SERVICE ADDRESS

1. John Sampugnaro
Motions Clerk of the Bronx Supreme Court Criminal Division
851 Grand Concourse
Bronx, New York 10451